IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11746 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJU @ BILLU MANDORA S/O. GANGARAM MARWADI

Versus

POLICE COMMISSIONER AHMEDABAD

Appearance:

1. Special Civil Application No. 11746 of 2001

MR AR SHAIKH for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

1. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on June 14, 2001, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short),

detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration four offences registered against the petitioner under the Bombay Prohibition Act , so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of bootlegger and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Mr. Shukla, learned advocate appearing for Mr. Shaikh, learned advocate for the petitioner, has restricted his arguments to the ground that there is improper exercise of powers under Section 9(2) of the PASA Act. He has drawn attention of this Court to the fact that the statements of anonymous witnesses were verified on 13.6.2001 and the order detention was passed on 14.6.2001. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. Mr. Shukla submitted further that, so far as the offences are concerned, vital documents, namely, F.S.L. reports, are not supplied. He, therefore, the submitted the petition may be allowed and the order of detention may be quashed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on 11.6.2001. The same have been verified by the detaining authority on 13.6.2001 and the order is passed on 14.6.2001. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses and the statements and the statements are correct and genuine. Barring this statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need

for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Kalidas Chandubhai Kahar v. State of Gujarat Gujarat & Ors., 1993(2) GLR 1659).

6. So far as the offences are concerned, there is non-supply of vital documents, namely, F.S.L. reports, at the time of detention. Even after represent, the documents were supplied late. Mr. Shukla has placed on record communication received from the detaining authority dated 11.12.2001 wherewith the F.S.L. reports were supplied. The reports indicate that they were ready on 11.5.2001 and 7.6.2001. The date of the third report is not legible, but probably it is 20.6.2001. In any case, the documents, though available, were not supplied at the time of detention along with the grounds of detention. Non-supply of these reports would indicate that either they were not placed before the authority and were not considered by the detaining authority or that they were considered and were not supplied to the detenu. In either case, it would affect the order of detention in the first eventuality. The order would be vitiated on account of the vice of non-consideration of relevant documents. In the second eventuality, the order would be affected due to non-supply of relevant documents affecting the right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. In this regard, decision of this Court in Rajendra Mrugeshbhai @ R.K. Mudaliyar v. Commissioner of Police dated 1.12.1999 (Special Civil Application No.6745 of 1999) and Ramesh @ Bhangari Balaji Thakor (Zala) v. State of Gujarat, 2000(2) GLR 1777 can be profitably referred to. The petition, therefore, deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated 14.6.2001, passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Raju @ Billu Mandora is ordered to be set at liberty forthwith, if not required in any other

case. Rule is made absolute.

8. Direct service is permitted.

[A.L. DAVE,J.]
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